IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 117 OF 2003.

Shri Pedro Ferrao @ Peter
Ferrao, r/o R.2 CD Mary Gold,
Ambajim, Fatorda, Salcete-Goa. ... Applicant.

Versus

State through Police Inspector,
Maina-Curtorim Police Station,
Margao, Goa. ... Respondent.

Mr. A.P. Lawande and Mr. S.S. Kakodkar, Advocates for the Applicant.

Ms. W. Coutinho, Additional Public Prosecutor for the Respondent State.

Coram : P.V. HARDAS, J.

Date : 5th June 2003.

ORAL ORDER.

The applicant is an accused in Crime No. 30 of 2003, registered under Section 3 read with Section 7 of the Essential Commodities Act, 1955 and Sections 285 and 407 read with Section 34 of the Indian Penal Code. The applicant by the present application seeks pre-arrest bail in the aforesaid crime.

2. According to the applicant, the applicant is a businessman carrying on different types of business including business in the name and style of M/s. Goa Distributors dealing in parallel marketing of Superior Kerosene Oil in Goa as well as in Bombay. According to the applicant, the said Superior Kerosene Oil has high demand in the market and price-wise it is higher than that of blue kerosene. The Superior Kerosene Oil is made open in the market by the Government for the past

several years and the applicant procures the same from B.R. Petrochems Pvt. Ltd., who are authorised to make its sale. According to the applicant, on 14th May 2003 his office had placed an order for Superior Kerosene Oil from the said M/s. B.R. Petrochems Pvt. Ltd. and, accordingly, the Superior Kerosene Oil was dispatched in a tanker bearing No. GA-02-U-5865 for transportation from Mangalore to Goa. According to the applicant, he had proceeded to Bombay on 9th May 2003 and came to Margao, Goa, on 20th May 2003 on learning that the above vehicle had been seized.

3. According to the prosecution, a raid had been conducted by the Mamlatdar of Salcete and S.D.M. Margao, on 19th May 2003 and during the raid it was noticed that two different tankers bearing no. GA-02-U-7860 and the tanker, in which the Superior Kerosene Oil belonging to the applicant was transported, were parked and the petroleum contents were being mixed with the help of three different motors connected with P.V.C. pipes. The presence of the representative of the Hindustan Petroleum Company was secured and the petroleum contents were checked and the same were suspected to be adulterated diesel and blue kerosene filled in plastic cans. The material available at the scene of offence including the tankers were seized. The tanker which was engaged for transport of Superior Kerosene Oil and belonging to the applicant was found to contain about 1500 litres of suspected diesel and the

other tanker was found to contain approximately 9000 litres of suspected diesel. Apart from that one autorickshaw was found loaded with five plastic cans containing 35 litres each of suspected diesel. According to the prosecution, Antonio Ferrao, Shah Niwaz and Shaikh Mohammad Salim, who were present at the scene of offence on 19th May 2003 were arrested. It may be stated that the said Antonio Ferrao is the brother of the applicant and was found present at the scene of offence while mixing the petroleum product. According to the prosecution, Superior Kerosene Oil/white kerosene was not found on the spot. However, 370 litres of blue kerosene was found. The spot or the scene of offence is Arlem Bharebhat, which is said to belong to the brother of the applicant by name John Ferrao. At the scene of offence there is one shed in which three huge tankers of the capacity of 10,000 each were found alongwith the necessary appliances used for mixing the petroleum product.

4. The applicant had filed an application for anticipatory bail, being Anticipatory Bail Application No. 176 of 2003, which came to be rejected by the Assistant Sessions Judge, South Goa, Margao, by Order, dated 23rd May 2003. Hence, the present application.

5. Mr. Lawande, the learned counsel appearing on behalf of the applicant, has urged before me that there is no prima facie case against the present

applicant. Admittedly, the applicant was not present when the raid on 19th May 2003 was conducted. The applicant is a businessman, who had entered into a genuine business transaction of transportation of Superior Kerosene Oil from Mangalore to Goa. The applicant had also left for Bombay on 9th May 2003 and had returned only on 20th May 2003 when he learnt that his tanker had been seized in the offence. It has also been urged before me that the offence under Section 407 is not attracted as the same is not applicable. It is stated that an offence under Section 285 is bailable and the offence under Section 3 of the Essential Commodities Act is punishable with a maximum sentence of 2 years. It is, therefore, urged by the applicant that taking an overall view of the allegations against the applicant, the custody of the applicant is not required and this is a fit case for ordering the release of the applicant on bail, in the event of his arrest.

6. The learned Additional Public Prosecutor on behalf of the State has urged before me that the applicant is involved in a serious offence and shackles should not be put on the investigating agency by ordering pre-arrest bail by the applicant. She has also urged before me that the applicant is already facing a trial in respect of Crime No. 78/79 under Sections 379, 407 and 109 read with Section 34 of the Indian Penal Code and Section 23 of the Petroleum Act, 1934. According to the learned Additional Public Prosecutor,

custodial interrogation of the applicant is necessary in order to effectively investigate the crime.

7. Assuming for the sake of argument at this stage that Section 407 of the Indian Penal Code is not attracted, the fact remains that the tanker ostensibly carrying Superior Kerosene Oil from Mangalore to Goa was found to contain suspected diesel. The learned trial Court, while rejecting the anticipatory bail of the applicant, has also observed:- "...what was actually found in the vehicle was suspected diesel and blue kerosene, the tanker by which the applicant had transported Superior Kerosene Oil from Mangalore to Goa was being driven by the brother of the applicant and the said tanker and another tanker were actually noticed with pipes attached to them and the persons present were in the active process of mixing of petroleum products." The applicant is being prosecuted in respect of Crime No. 78/79. The allegations against the applicant are serious and the normal investigation at this stage cannot be thwarted by ordering pre-arrest bail. According to me, the applicant has not been able to demonstrate that he has either been falsely implicated or that he is innocent, considering the gravity of the allegations against the applicant.

8. According to me, therefore, the applicant has not made out any case for the exercise of discretion of grant of pre-arrest bail in the aforesaid crime.

Needless to state that any observations made while deciding this application should not influence the trial Court while hearing the plea for bail on merits filed by the applicant.

9. In the result, therefore, Criminal Miscellaneous Application is rejected.

(P.V. HARDAS)
JUDGE.

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